IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.207 OF 2003

Mr. Deelip Harichandra Insulkar
of major age, service,
r/o house no.21/6(old),
St.Anthony Wada, Guirim,
Bardez, Goa ... PETITIONER

VERSUS

1. Mr. Pandit M. Insulkar,
of major age, service,
s/o late Mahadev A.Insulkar,
r/o H.No.21/6(old) and
present house no.734 (new)
St. Anthony wada, Guirim,
Bardez-Goa;

2. Village Panchayat of Guirim,
Guirim, Bardez, Goa ... RESPONDENTS.

Mr. S.S. Kantak and Ms. Rakhi M. Chodankar,
Advocates for the Petitioner.

Mr. J.P. Mulgaonkar, Advocate for the Respondent No.1.

CORAM : F.I. REBELLO,J.

DATED : JULY 10, 2003.

ORAL JUDGMENT

Rule. Respondents waive service. Heard forthwith.

2. The challenge is to the Order dated 23-12-2002 whereby the application for amendment sought for by Respondent No.1 herein has been allowed. By the present Petition, the Petitioners contend that there was an earlier application for

amendment wherein the amendments sought were identical. The said application was rejected. Revision filed before this Court was also disposed of as withdrawn. The learned Trial Court itself has noted the said fact, but however, did not decide the plea of res judicata as raised by the Petitioners herein. That would clearly amount to an error apparent on the face of the record and to that extent the Order is liable to be set aside.

3. The ground on which the learned Trial Court allowed the application was that the issue of limitation can be raised if the application for amendment is allowed. That really cannot be faulted. However, that would if the issue is a mixed question of fact and law. It is not possible from the said finding to know whether the learned Trial Judge rejected the same on the ground that the said issue would be a mixed question of fact and law. As such that would amount to an error apparent on the face of the record. In the light of that the following Order:

Petition is made absolute in terms of prayer clauses (a) and (b). The matter is remanded back to the Trial Court to dispose of the amendment application after hearing the parties and according

to law. Rule made absolute accordingly. There shall be no order as to costs.

F.I. REBELLO,J.

ac.